## SUHAIMI BIN IBRAHIM v. UNITED MALAYA INSURANCE CO. LTD.

[O.C.J. (MacIntyre J.) November 18, 1965]

[Ipoh — Civil Suit No. 10 of 1964]

*Insurance — Workmen's compensation policy — Breach of warranty — Breach of condition.*

The plaintiff had obtained a licence to fell and remove timber from a forest reserve and in connection with his business he had taken out a workmen's compensation policy with the defendants. In the proposal form the plaintiff declared that the number of workers engaged by him was six and the insurance policy was issued on this basis. One of the tree fellers engaged by the plaintiff was killed by a falling tree and the plaintiff gave notice of the accident to the defendants. An inquiry was held into the accident and the dependants of the deceased worker was granted $7,200 as compensation under the Workmen's Compensation Ordinance. The plaintiff claimed indemnity for this sum under the insurance policy. The claim was contested on the grounds of (a) breach of warranty, it being alleged that the plaintiff engaged more than six workers in his business and (b) breach of condition of the policy in that the plaintiff failed to have the dispute referred to arbitration within twelve months of the date when the defendants disclaimed liability.

**Held:** (1) on the facts the plaintiff had employed more than six persons on the tree felling operations and therefore there had been a breach of warranty by the plaintiffs;

(2) there had also been a breach of the condition of the policy in that the plaintiff had failed to refer the dispute to arbitration within twelve calendar months of the date when the defendants disclaimed liability;

(3) the defendants were therefore not liable on the policy and the claim must be dismissed.

*Case referred to:—*

(1) *Dawson Ltd.* v. *Bonnin* [1922] A.C. 413.

CIVIL SUIT.

*W. S. W. Davidson* for the plaintiff.

*C. Selvarajah* for the defendants.

*Cur. Adv. Vult.*

**MacIntyre J.:** This is a claim by the plaintiff against the defendants, an insurance company, for indemnity under a policy of insurance to the extent of $7,200 in satisfaction of an award made under the Workmen's Compensation Ordinance. The writ was filed on the 8th day of January 1964 and the statement of defence on the 18th of February 1964. The claim was contested on two grounds, namely,

(a) breach of warranty; and

(b) breach of condition 8 of the policy in that the plaintiff failed to have the dispute referred to arbitration within 12 calendar months of the date when the defendants disclaimed liability.

The facts of the case are as follows: on the 1st day of March 1960 the plaintiff obtained a licence (vide D.1) from the Government of Perak to fell and remove timber from a forest compartment in the mukim of Ijok. In connection with this business the plaintiff took out a workmen's compensation policy (A2 in the agreed bundle of documents marked "A") with the defendants valid for the period commencing on the 25th day of May 1960 and ending on the 24th day (inclusive) of August 1960. In the proposal form (A1) the plaintiff declared that the number of workers engaged on the tree felling operation would be six consisting of two tree fellers, one lorry driver, one lorry attendant and two miscellaneous workers. On the basis of this declaration the defendants issued a workmen's compensation policy subject to a warranty that during the currency of the policy only six persons will be engaged in the operation as mentioned in the proposal form.

On the 24th of August, 1960, one of the tree fellers in the course of his employment was killed by a falling tree and on the 30th of August the plaintiff gave notice (A7A) of the accident to the defendants.

Thereafter an enquiry into the accident was held by the Assistant State Commissioner for Labour and the defendants of the deceased were granted $7,200 as compensation under the Workmen's Compensation Ordinance.

Owing to the plaintiff's change of address immediately after the accident, certain letters addressed to him by the defendants in regard to the plaintiff's claim for indemnity went astray and the first letter to reach his hands was a letter dated the 21st of April 1961 (A18). In that letter, the defendants informed the plaintiff that their investigation had revealed that he had employed as many as 23 labourers in the operation and requested him without prejudice to their right of disclaimer, to furnish them with the names, identity card numbers, and nature of work done by each labourer with particulars of their monthly earnings to enable them to consider the claim. The plaintiff was also warned that failure to comply with the request would render the policy null and void by virtue of condition 9 thereof. The plaintiff replied denying that he had employed more than six permanent labourers but admitting the employment of some other labourers on casual work not covered by the terms of the policy (*vide* A19). The defendants wrote again on the 5th of May 1961 (*vide* A20) repeating their demand for the particulars but the plaintiff ignored the request.

Then five months later the Assistant State Commissioner for Labour took a hand in the matter and addressed a letter to the defendants on the 5th of October 1961 demanding payment of the compensation. The defendants replied by letter dated the 31st of October (A21) disclaiming liability. Later the defendants' solicitors, Messrs. Braddell & Ramani, also confirmed the disclaimer by a letter dated 15th of November 1961 (A23) and a further letter (A24) dated the 3rd of January 1962.

It is the plaintiff's case that he was never

informed by the defendants or their solicitors or by the Assistant State Commissioner for Labour of the disclaimer of liability by the defendants and that he first became aware of it when a copy of the aforesaid letter of the 15th of November was forwarded to his solicitors, Messrs. Gibb & Co., on the 8th of July 1963 by Messrs. Braddell & Ramani. This situation was explained to Messrs. Braddell & Ramani by the plaintiff's solicitors in their letter (A26) dated the 16th of March 1964. It was also pointed out that it was still not too late to submit the dispute to arbitration and that the plaintiff was willing to do so. The request was however turned down by the defendants as being out of time under condition 8 of the policy.

It was extraordinary that the plaintiff should have made no attempt to find out for himself during a period of about 2 years what the defendants proposed to do regarding his claim for indemnity. According to him he last heard from the defendants on or about the 5th of May 1961 and since the end of October 1961 the Assistant State Commissioner for Labour had been pressing the defendants on behalf of the plaintiff to pay up the compensation. Indeed, it is difficult to believe that up to the 8th of July 1963 he remained in complete ignorance of the defendants' attitude regarding his claim for indemnity. In the course of his evidence the Assistant State Commissioner for Labour said that he was unable to inform the plaintiff of the disclaimer of liability because he had changed his address. That does not mean, however, that the plaintiff was unaware of the disclaimer. He would have had no other means of knowing about it. He consulted his solicitors in May 1962. Why this sudden decision to engage solicitors about a year after he last heard from the defendants? On perusing the affidavit of documents filed by the plaintiff, I find that the plaintiff's solicitors wrote to the Assistant Commissioner for Labour Taiping on the 29th of May 1962 regarding this claim and although it would be correct to say as stated in the letter of Messrs. Gibb & Co. dated the 16th of March 1964 (A26) to defendants' solicitors that the defendants had not disclaimed liability to their clients (I underline "to their clients") it did not amount to saying that the plaintiff was unaware of the disclaimer communicated to the Assistant State Commissioner for Labour in the early part of 1962. Again it would appear from the plaintiff's affidavit of documents that although the defendants had written on behalf of the plaintiff to the Assistant State Commissioner for Labour on the 29th May 1962, they had not thought fit to write to the defendants till about the 6th of April 1963. This piece of negative evidence is also suggestive of the fact that in May 1962 the plaintiff's solicitors must have thought that no useful purpose would be served by writing to the defendants. In other words, they must have been aware of the disclaimer of liability under the policy.

On the evidence, I must hold that the plaintiff was aware of the disclaimer of liability by the defendants, if not before, by at least, on or about the month of May 1962. The plaintiff's claim in this suit must therefore fail for non-compliance with the terms of condition 8 of the policy.

However, the main defence is breach of warranty.

On the 25th of May 1960 the plaintiff signed the proposal form (A1) which contains a declaration that the particulars given therein are true and shall form the basis of the contract between the plaintiff and the defendants. In the schedule to the proposal form the plaintiff declared that he required insurance cover for 6 workmen consisting of two tree fellers, two miscellaneous workers, one lorry driver and one lorry attendant. He also gave their total annual income as being $3,300. Then below the schedule in answer to a question: "Does the above schedule include all persons in your service?". He replied: "Yes".

On the 26th the insurance policy was issued and it contains a recital that the proposal and declaration shall be the basis of the contract. In the schedule to the policy the particulars given in the proposal form are incorporated and contains an endorsement under the heading: "Warranty" which reads: "Warranted that during the currency of this policy only 6 (six) persons will be engaged in the operation as declared in the proposal form." The first condition endorsed on the reverse of the policy reads: "This policy and the schedule shall be read together as one contract.....".

In the course of evidence it was proved that the tree felling operation referred to in the proposal form was carried on under a licence issued by the Government of Perak. The plaintiff averred he had lost his copy of the licence and therefore the copy produced in court was the office copy retained by the forest department. The licence was issued on the 1st day of March 1960 subject to a condition endorsed thereon that not less than 10 labourers should be engaged in the operation. The plaintiff, however, affirmed that his copy of the licence was not endorsed with this condition. I was not impressed by his evidence. In the circumstances it appeared most convenient for him to have lost his licence. I accepted the office copy (D.1) as a true copy of the licence issued to the plaintiff. Since the proposal form was signed about 3 months after the issue of the licence, the plaintiff in declaring in the proposal form that he would employ only 6 men on the job must be regarded to have intended to either misrepresent the facts to the

defendants or to carry on the operation in breach of the condition of his licence.

However, it was established by evidence that the plaintiff had carried on operation under the licence in compliance with the condition as to the minimum number of labourers to be engaged. The assistant district forest officer (D.W.1) giving evidence on the basis of the records kept in his department deposed that from time to time the plaintiff had sent in returns shewing the names, race and the number of labourers employed by him in the aforesaid operation and the returns had been checked on the field by the department's foresters and found correct. The witness also tendered in evidence two returns submitted by the plaintiff and were exhibited as D.2 and D.3. These returns shew that the plaintiff had from 15 to 17 labourers working for him at a time during the currency of the insurance policy.

Now one of the conditions attached to the licence was that except for the lorry driver and the attendant, all the other employees must be Malays or aborigines. According to the assistant district forest officer the plaintiff had at one time been warned by the department for non-compliance with this condition. I mention this fact not because it had any relevance to the issue under consideration but as evidence of the fact that the forest department did carry out investigations from time to time to find out whether the plaintiff complied with the conditions of his licence.

The plaintiff, on the other hand, maintained that at no time had he more than 6 men under his permanent employ but admitted having had in his work roll as many as 23 labourers at a time and living in his kongsi house. However, he averred that except for the 6 permanent employees the rest were casual labourers whom he employed occasionally to mend the road from the kongsi house to the work site and occasionally to act as substitutes whenever any of his permanent employees were on leave. However, he was unable to substantiate by documentary evidence his allegation that his employees, other than the six permanent workers were not permanent because, here again most conveniently I thought, his pay book which he was obliged to keep under the terms of the policy was lost or mislaid.

The plaintiff called two witnesses besides himself to prove by oral evidence that he had only 6 men in his permanent employ. One of them was P.W.4, the brother of the deceased workman. Obviously, he was an interested party and I did not attach much weight to his evidence. The other witness called was P.W.3, the kapala or the foreman of the work gang. He was paid a monthly salary of $200 a month and was a manual worker. He was undoubtedly a workman within the meaning of section 2 of the Workmen's Compensation Ordinance. In the particulars given in the schedule to the proposal form this witness was not included among the workers mentioned therein as none was referred to as earning an annual income of $2,400. Now according to this witness the plaintiff employed 6 men to work in the forest compartment excluding himself. He deposed that his job consisted of general supervision of the work including the transport of the timber and that he also worked in mending the road. The evidence of this witness far from proving the plaintiff's case proved the defendants' case of breach of warranty in that according to him seven men were employed on the job.

Counsel for the plaintiff citing a passage from *MacGillivray* on Insurance, Vol. 1 paragraph 944 at page 458, submitted that warranties should be read liberally in favour of the assured and against the insurance company. In the present case the question of construing the warranty does not arise. It is simply a question of deciding whether during the currency of the policy the plaintiff employed 6 or more than 6 workmen on the job.

Where the statements contained in a proposal formed the basis of a contract of insurance, it was held in *Dawson Ltd.* v. *Bonnin* [1] that the truth of the statements in the proposal form was a condition of the liability of the insurer.

The basis of the contract in the present case is that the liability of the defendants is subject to the observance by the plaintiff of the condition that he employed not more than 6 labourers on the tree felling operation.

I have no hesitation in rejecting as untrue the plaintiff's evidence that he employed only 6 workmen on the tree felling operation. I hold that the plaintiff in breach of warranty under the insurance policy but in compliance with the condition of his licence and in accordance with the returns submitted to the forest department had in his employ more than 10 labourers working in the forest compartment.

The plaintiff's claim is therefore dismissed with costs.

*Claim dismissed.*

Solicitors: *Gibb & Co.; Braddell & Ramani.*

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## WONG AH SUAN v. CHII POH GET & ANOR.

**[A.Cr.J. (Harley J.) November 19, 1965]**

**[Kuching — Criminal Appeal No. K 17 of 1965]**

*Landlord and Tenant— Sub-tenants —Information relating to — Failure to furnish statutory declaration required by landlord — Rent Control Ordinance (Sarawak Cap. 86), s. 17(2) — Reasonable excuse — Mens rea — Person relying on advice of solicitor.*